

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000423

FILED: _____

STATE OF ARIZONA

LISA B BARNES

v.

MARK RYAN PETTEWAY

GENE R STRATFORD

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5856748

Charge: 1. DUI
2. DUI W/AC .10 OR MORE

DOB: 02/29/52

DOC: 03/08/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000423

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

Appellant, Mark Ryan Petteway, was arrested and charged on March 8, 2001 with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Having a Blood Alcohol Concentration of .10 or Higher, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and No Proof of Insurance, a Civil Traffic violation of A.R.S. Section 28-4135(C). Appellant filed a Motion to Suppress evidence based upon his contention that the police officers lacked a reasonable suspicion to justify an investigative detention of his vehicle. After an evidentiary hearing the trial court denied this motion. Thereafter Appellant and Appellee submitted the case to the court and waived their rights to a jury trial. Appellant was convicted of the two misdemeanor offenses and has filed a timely Notice of Appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of his vehicle. Appellant claims that the Phoenix Police Officers did not have a "reasonable suspicion" which would justify the stop. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B)

¹ Terry V. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000423

also provides authority for police officers to conduct an
"investigative detention":

A peace officer may stop and detain a
person as is reasonably necessary to
investigate an actual or suspected
violation of any traffic law committed
in the officer's presence and may serve
a copy of the traffic complaint for any
alleged civil or criminal traffic
violation...

A temporary detention of an accused during the stop of an
automobile by the police constitutes a "seizure of "persons"
within the meaning of the Fourth Amendment even if the detention
is only for a brief period of time.³ In Whren⁴ the United States
Supreme Court upheld the District's Court denial of the
Defendant's Motion to Suppress finding that the arresting
officers had probable cause to believe that a traffic violation
had occurred, thus the investigative detention of the Defendant
was warranted. In that case, the police officers admitted that
they used the traffic violations as a pretext to search the
vehicle for evidence of drugs. The Court rejected the
Defendant's claim that the traffic violation arrest was a mere
pretext for a narcotic search, and stated that the
reasonableness of a traffic stop did not depend upon the actual
motivations of the arresting police officers. Probable cause to
believe that an accused has violated a traffic code renders the
resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an
investigative detention is a mixed question of law and fact.⁶ An

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d
89 (1996).

⁴ Id.

⁵ Id.

⁶ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996);
State v. Magner, Supra.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000423

appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and evidence, will an abuse of discretion be established.⁹ This Court must review de novo the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case, the evidence clearly showed that the arresting officer observed Appellant commit a civil traffic violation by making a wide turn, regardless whether the police officer believed that those facts constituted a civil traffic violation, or not. The objective facts presented to the trial judge do reflect a violation of A.R.S. Section 28-751 which requires that right-hand turns be made as close as practical to the right hand or the edge of the roadway. Clearly, Appellant's wide turn onto the roadway provided an objective basis for the police to make the investigative detention of him and his vehicle.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all further and future proceedings in this case.

⁷ Id.

⁸ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ State V. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.